

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

PAUL CASTONGUAY,)	4:10CV3000
)	
Petitioner,)	
)	
V.)	MEMORANDUM
)	AND ORDER
DOUGLAS COUNTY)	
CORRECTION CENTER,)	
)	
Respondent.)	

This matter is before the court on its own motion. Petitioner filed his Petition for Writ of Habeas Corpus on January 4, 2010, asserting claims relating to his conviction for first degree sexual assault. (Filing No. [1](#).) According to Petitioner, his direct appeal of this conviction is currently pending before the Nebraska state courts. ([*Id.*](#) at CM/ECF pp. 10-11.)

The court is concerned that proceeding with the Petition at this time may result in “successiveness” problems for Petitioner later.¹ In light of this concern, the court will permit Petitioner 30 days in which to voluntarily dismiss his Petition. If Petitioner does voluntarily dismiss his Petition, the court will take no action on the merits of the Petition and Petitioner can re-file his Petition when the state court

¹In order for a petition to be considered “successive,” it must “contest[] the same custody imposed by the same judgment of a state court.” [*Burton v. Stewart, 549 U.S. 147 \(2007\)*](#). If a petition is deemed successive, the district court lacks “jurisdiction to consider it in the first place” and the district court must dismiss the petition. [*Id.*](#) The general bar against abusive or successive claims extends both to new claims which could have been raised or developed in an earlier petition and to successive claims which raise grounds identical to those heard and decided on the merits in a previous petition. See [*Vancleave v. Norris, 150 F.3d 926, 929 \(8th Cir.1998\)*](#).

proceedings are concluded. If Petitioner does not voluntarily withdraw his Petition, the court will proceed on the merits of the Petition.

IT IS THEREFORE ORDERED that:

1. Petitioner shall have until **April 4, 2010**, to voluntarily dismiss his Petition for Writ of Habeas Corpus in accordance with this Memorandum and Order.
2. In the event that Petitioner does not withdraw his Petition, the court will conduct its initial review and proceed on the merits of the Petition.

DATED this 3rd day of March, 2010.

BY THE COURT:

S/ Joseph F. Bataillon
Chief United States District Judge

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